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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,489	02/18/2004	Alex Simmons	60001.0303US01/MS 302496.	3119
27488	7590	04/20/2009	EXAMINER	
MERCHANT & GOULD (MICROSOFT)			HASSAN, AURANGZEB	
P.O. BOX 2903			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402-0903			2182	
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			04/20/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/781,489	Applicant(s) SIMMONS ET AL.	
	Examiner AURANGZEB HASSAN	Art Unit 2182	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Tariq Hafiz/
 Supervisory Patent Examiner, Art Unit 2182

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner has considered the Applicant's arguments however does not consider them persuasive. The applicant argues 1) The prior art does not teach the claimed invention, 2) Stein/Fitzmorice or Hawkins does not teach utilizing a selection-based input device in a pen-based mode, 3) Wacom does not teach utilizing input devices concurrently but instead is only capable of receiving input from whichever input device has been set as active by a detection of that device's presence on the tablet.

As per argument 1, the Examiner respectfully disagrees. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The applicant's arguments do not appropriately address the final rejection most recently represented by the Examiner.

As per argument 2, the Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Applicant has argued that Stein/Fitzmorice or Hawkins does not teach utilizing a selection-based input device in a pen-based mode. On page 12 of the Applicant's arguments in lines 3 to 5 the Applicant has cited a passage related to utilizing a selection based input device in a pen based mode seen in the office action page 4. The next paragraph of the Applicant's arguments state that Hawkins does not overcome the deficiencies of Stein/Fitzmorice and sites page 8 of the office action. The Examiner makes note that page 4 of the office action is directly related to CLAIM 1 and page 8 of the office action is directly related to CLAIM 11 (emphasis added). In fact the Examiner does not even rely upon the teachings of Hawkins for utilizing a selection-based input device in a pen-based mode. So the Applicant has not appropriately addressed the claim limitations with regards to the rejection seen on page 4 of the office action.

Assuming *arguendo*, with respect to the arguments directed to the rejection of claim 11, the Applicant states on page 12, lines 17 - 20 that:
Nowhere does Hawkins disclose even the presence of a separate selection-based input device, nor does Hawkins disclose latching such a selection-based input device for use as a pen style input device. RATHER, HAWKINS MERELY DISCLOSES A STYLUS OPERATIVE AS AN INTERACTIVE POINT INTERFACE (emphasis added).

The Examiner directs the Applicant's attention to the language of claim 11, in which the claim clearly states the objective that a pen-based input device is latched for behavior as a selection-based input device. A selection based input device by definition as seen in the specification is a point interface device. So the Examiner hereby agrees with the remarks seen on page 12, lines 17 - 20 that indeed Hawkins is relevant prior art with respect to claim 11 as argued by the Applicant.

As per argument 3, the Examiner respectfully disagrees. The Applicant argues that Wacom does not teach "utilizing a plurality of input devices concurrently". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., utilizing a plurality of input devices concurrently) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The argument against Wacom is a moot point not only because it has not been recited in the claims but the Applicant's invention is directly against concurrent utilization of input devices. This concept can be clearly understood by the language recited in the claim limitations and the specification and is in fact best embodied by the title of the instant application which states "AUTOMATIC DETECTION AND SWITCHING BETWEEN INPUT MODES." Switching is not concurrent.

Furthermore assuming *arguendo*, similar to argument 2, the Examiner addresses the points that the Applicant has stated are taught by Wacom. The Applicant states on page 13, lines 10 - 15:

While the tablet in Wacom is capable of receiving input from either a pen or a mouse, Wacom is only capable of receiving input from which ever input device has been specified as active by a detection of that device's presence on the tablet (Wacom see page 89). In fact Wacom teaches that a user should not have more than one input device near the tablet as the devices will interfere with one another (Wacom see page 42).

This statement is two-fold, FIRST is that of the latching of Wacom can be done by either a pen or a mouse, SECOND that there is interference caused by having more than one input near the tablet. As per the FIRST portion the Examiner has utilized Wacom to teach the latching characteristics of a pen-based (pen of Wacom) and selection-based (mouse of Wacom) input devices. It appears as though the Applicant has not completely understood the office action and in order to better elaborate the limitations, the Examiner notes page 4 of the office action which characterizes the latching properties. Accordingly it is clear based on the Applicant's statements of what is taught by Wacom, that Wacom teaches the latching characteristics as necessitated by the claims. As per the SECOND portion the Examiner has considered that statement that Wacom teaches not having more than one input device near the tablet due to interference and notes that the claim limitations do not necessitate any proximity of a pen-based and selection-based input device. In fact proximity is of no concern to the Applicant's invention. Furthermore the Applicant has cited page 42 of Wacom to display the lack of teaching of concurrent device because of interference from other input devices however page 42 clearly states that this reason is for an airbrush tool in conjunction with the pen tool of Wacom. The airbrush tool is a stylus type pen device, the concerns are directed to utilizing two pen-based input devices. Clearly the claim limitations do not address in any capacity utilization of multiple pen-based input devices and therein are not necessitated by the claims.

